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IN THE
COURT OF APPEALS OF INDIANA

IN RE THE MATTER OF THE PATERNITY OF W.A.K. and J.N.K. by their Next Friend,	)	
CRYSTAL FEICHTER,	)	
Appellant-Petitioner,	)	
vs.	)	No. 35A02-0606-JV-519
JASON M. KOCHENSPARGER,	)	
Appellee-Respondent.	)	

APPEAL FROM THE HUNTINGTON CIRCUIT COURT
The Honorable Mark A. McIntosh, Judge
Cause No. 35C01-0203-JP-28

January 30, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Judge

Crystal Feichter ("Mother") appeals the trial court's grant of a petition for modification of child custody filed by Jason Kochensparger ("Father"). Mother raises one issue, which we revise and restate as whether the trial court abused its discretion by modifying custody. We affirm.

The relevant facts follow. Mother and Father had two children out of wedlock, J.K., born on September 11, 2003, and W.K., born on December 6, 2001. On March 28, 2002, and July 24, 2004, the trial court entered agreed orders confirming paternity and establishing child support. The agreed orders also granted Mother custody of the children and granted Father reasonable visitation according to the Indiana Supreme Court Parenting Time Guidelines.

On November 11, 2002, Father, a member of the National Guard, was activated and was on active duty until October 8, 2003. In September 2004, John Kochensparger, Father's uncle in Virginia, came to help Mother move to Virginia to live with John and his wife, which the trial court had approved. At the time, Mother's apartment was in a "deplorable" condition with a month's worth of trash sitting around and thousands of gnats in the apartment. Transcript at 35. Mother worked at a mailbox service, a fast food restaurant, and for John's business while she was in Virginia. Mother lived with John and his wife until John requested that she leave in April 2005. Mother then moved into a hotel for a week awaiting her flight back to Indiana.

In December 2004, Father married Casey Capizoli and began work at Eco-Lab, where he was still working at the time of the hearing. In the last two years, Mother has had five or six jobs.

In April 2005, Mother returned to Indiana. After her return, Mother denied Father visitation. Mother and Father disagreed about when Father could pick the children up and which holidays Father could have the children. Mother told Father that she was going to cut back on his visitation. When Father would attempt to pick up the children, Mother would engage in vocal altercations. In reference to Casey, Mother told Father to "keep that stupid bitch off my property," in front of the children. Transcript at 17. At one point, Casey's parents sent the children gifts, and Mother stated that they had no business sending the children anything.

On May 9, 2005, Father filed a petition for modification of custody. Father bought a house and was in the process of moving in at the time of the hearing.

After hearings on Father's motion, the trial court entered the following order:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

> [T]his cause having been submitted into evidence and heard, and the Court, being duly advised in the premises, now enters the following Findings of Fact and Conclusions of Law:
>
> 1. That the parties are the parents of two (2) children, [W.K.], age 4, and [J.K.] age 2.
>
> 2. That [Mother] was awarded custody of the minor children and [Father] was to have the right to exercise parenting time pursuant to the Indiana Supreme Court Guidelines.

3. That [Father] was ordered to pay child support for the care and benefit of the minor children, which child support is paid to a current status.

4. That [Mother] has demonstrated a [sic] instability in employment, in that she has held nine (9) different jobs since 2001. That [Mother] has demonstrated a [sic] instability in her lifestyle in that she has resided at six (6) different locations since January 1, 2003.

   That these instabilities cited above have placed the minor children in an unstructured and unstable living condition, to their detriment.

5. That [Mother] along with the children, has resided in an apartment described as "deplorable" with a "path through the apartment" surrounded by stacks of trash, months worth of trash in garbage bags, including soiled diapers, and thousands of gnats present in the apartment, while living with the minor children in said apartment.

   That [Mother] has been described as having no housekeeping skills with very dirty sheets, and dirty diapers in the wastebasket.

6. That testimony of John Kochensparger indicated that while [Mother] lived with him and his wife, [Mother] would only sometimes get up to care for the children at night, leaving the parenting duties to John Kochensparger and his wife. That in addition, John Kochensparger testified that [Mother] often placed the children in front of the television for child care, and frequently imposed on neighbors for child care.

7. That [Mother] monitored telephone conversations between [Father] and the minor children, while staying close to the phone, and on occasion interrupted those telephone conversations.

8. That [Mother] made disparaging comments about [Father] in the presence of the children.

9. That [Father] has regularly exercised visitation, however, [Mother] has created problems with that visitation, has denied [Father]'s wife the right to pick up the children for visitation, has made disparaging comments about [Father]'s wife in the presence of the children, and

has denied gifts intended for the children because they were from [Father]'s wife and family.

10. [Father] was recently married to Casey Kochensparger.

11. Testimony established that [Mother] did not comply with the Indiana Supreme Court Guidelines, in that [Mother] did not offer [Father] the right of first refusal to care for the minor children, while [Mother] was at work, rather, [Mother] unilaterally took the minor children to a child care provider, and at times, denied the [Father] the opportunity to even pick up the children from the child care provider.

12. [Mother] acknowledged that she attempted to control [Father]'s visitation with the minor children and restricted visitation by not agreeing to changes in alternate weekend visitation, although she could give no reasons therefor.

13. [Father] and the minor children's stepmother, Casey Kochensparger, are substantially involved in the minor children's life, and testimony from John Kochensparger was that [Father] and Casey Kochensparger were spectacular around the children and could do a much better job parenting the children than [Mother].

14. [Mother] is currently employed at Bendix and currently earns the sum of Three Hundred Eighty Dollars ($380.00) per week for a forty (40) hour week.

    [Father] is currently employed at Ecolab and currently earns the sum of Four Hundred Ninety-eight Dollars ($498.00) per week.

    That the children are presently on Medicaid but that if awarded custody, [Father] would place them on his health insurance.

    That if awarded custody, [Father] would have no work related child care expenses.

* * * * *

17. That a modification of child custody would be in the best interests of the children and that there has been a substantial change in one (1) or

> more of the factors the Court may consider, including but not limited to the interaction and interrelationship of the children's parent or parents, and any other person who may significantly affect the children's best interest, the children's adjustment to the children's home and community, and the mental and physical health of the children involved.
>
> THEREFORE, based upon the foregoing findings of fact and conclusions of law, the Court now ADJUDGES, ORDERS AND DECREES as follows:
>
> 1. This Court makes the finding, based upon the above, that pursuant to I.C. 31-17-2-21, it is in the best interests of the minor children, [W.K.] and [J.K.] that custody be modified and custody is hereby awarded to [Father].
>
> 2. The Court finds and orders that it has considered the facts as is set out in I.C. 31-17-2-8 and I.C. 31-17-2-21, and that there has been a substantial change in those factors, including but not limited to the interaction and interrelationship of the children with the children's parent or parents, and other persons who may significantly affect the children's best interests, as well as the children's adjustment to their home and community, as well as the mental and physical health of all of the individuals involved.
>
> * * * * *

Appellant's Appendix at 48-52.

The sole issue is whether the trial court abused its discretion by granting Father's motion to modify custody. The modification of a custody order lies within the sound discretion of the trial court. Spencer v. Spencer, 684 N.E.2d 500, 501 (Ind. Ct. App. 1997), reh'g denied. "We review custody modifications for abuse of discretion, with a 'preference for granting latitude and deference to our trial judges in family law matters.'" Kirk v. Kirk, 770 N.E.2d 304, 307 (Ind. 2002) (quoting In re Marriage of Richardson,

622 N.E.2d 178, 178 (Ind. 1993)). The Indiana Supreme Court explained the reason for this deference in Kirk:

> While we are not able to say the trial judge could not have found otherwise than he did upon the evidence introduced below, this Court as a court of review has heretofore held by a long line of decisions that we are in a poor position to look at a cold transcript of the record, and conclude that the trial judge, who saw the witnesses, observed their demeanor, and scrutinized their testimony as it came from the witness stand, did not properly understand the significance of the evidence, or that he should have found its preponderance or the inferences therefrom to be different from what he did.

Id. (citing Brickley v. Brickley, 247 Ind. 201, 204, 210 N.E.2d 850, 852 (1965)). "Therefore, '[o]n appeal it is not enough that the evidence might support some other conclusion, but it must positively require the conclusion contended for by appellant before there is a basis for reversal.'" Id. (quoting Brickley, 247 Ind. at 204, 210 N.E.2d at 852). We may neither reweigh the evidence nor judge the credibility of the witnesses. Fields v. Fields, 749 N.E.2d 100, 108 (Ind. Ct. App. 2001), trans. denied.

The trial court entered findings of fact and conclusions thereon when it issued its order modifying custody. When reviewing the trial court's findings of fact and conclusions thereon, we consider whether the evidence supports the findings and whether the findings support the judgment. Yanoff v. Muncy, 688 N.E.2d 1259, 1262 (Ind. 1997). Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference. Id. A judgment is clearly erroneous if it applies the wrong legal standard to properly found facts. Id. In order to determine that a finding or

conclusion is clearly erroneous, our review of the evidence must leave us with the firm conviction that a mistake has been made. Id.

Ind. Code § 31-14-13-6 (2004) governs the modification of a child custody order and provides, in part, that "[t]he court may not modify a child custody order unless: (1) modification is in the best interests of the child; and (2) there is a substantial change in one (1) or more of the factors that the court may consider under section 2 and, if applicable, section 2.5 of this chapter."[1] Ind. Code § 31-14-13-2 (2004) provides:

> The court shall determine custody in accordance with the best interests of the child. In determining the child's best interests, there is not a presumption favoring either parent. The court shall consider all relevant factors, including the following:
>
> (1) The age and sex of the child.
> (2) The wishes of the child's parents.
> (3) The wishes of the child, with more consideration given to the child's wishes if the child is at least fourteen (14) years of age.
> (4) The interaction and interrelationship of the child with:
> (A) the child's parents;
> (B) the child's siblings; and
> (C) any other person who may significantly affect the child's best interest.
> (5) The child's adjustment to home, school, and community.
> (6) The mental and physical health of all individuals involved.
> (7) Evidence of a pattern of domestic or family violence by either parent.
> (8) Evidence that the child has been cared for by a de facto custodian, and if the evidence is sufficient, the court shall consider the factors described in section 2.5(b) of this chapter.

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[1] The trial court cited Ind. Code §§ 31-17-2-21; and 31-17-2-8, which are applicable to determining custody in dissolution proceedings, while Ind. Code §§ 31-14-13-6; and 31-14-13-2, are applicable to determining custody in paternity proceedings. The paternity and dissolution statutes, however, contain virtually identical language.

"A change in conditions 'must be judged in the context of the whole environment,' and it is the 'effect upon the child . . . that renders a change substantial or inconsequential.'" In re Winkler, 725 N.E.2d 124, 128 (Ind. Ct. App. 2000) (quoting Lamb v. Wenning, 600 N.E.2d 96, 99 (Ind. 1992)). "Whether the effect is of such a nature as to require a change in custody is a matter within the sound discretion of the trial court." Id. Mother challenges the trial court's findings four through thirteen.

A. Finding 4 – Mother's Instability

Mother challenges the following finding:

> 4. That [Mother] has demonstrated a [sic] instability in employment, in that she has held nine (9) different jobs since 2001. That [Mother] has demonstrated a [sic] instability in her lifestyle in that she has resided at six (6) different locations since January 1, 2003.
>
> That these instabilities cited above have placed the minor children in an unstructured and unstable living condition, to their detriment.

Appellant's Appendix at 48. Mother argues that the trial court could not consider evidence prior to the last custody decree, which occurred on July 24, 2004. Ind. Code § 31-14-13-9 (2004)[2] provides:

> In a proceeding for a custody modification, the court may not hear evidence on a matter occurring before the last custody proceeding between the parties unless the matter relates to a change in the factors relating to the

[2] Mother relies on Ind. Code § 31-17-2-21(c) (2004), which applies to dissolution proceedings and provides that "[t]he court shall not hear evidence on a matter occurring before the last custody proceeding between the parties unless the matter relates to a change in the factors relating to the best interests of the child as described by section 8 and, if applicable, section 8.5 of this chapter."

> best interests of the child as described in section 2 and, if applicable, section 2.5 of this chapter.

Father argues that Mother has waived this issue with respect to the number of places Mother has lived because she "failed either to object to the admission of evidence of matters prior to the prior custody determination or to ask for the court to limit its consideration of that evidence to the best interests of the child." Appellee's Brief at 10. We agree. Sandra L. Feichter, Mother's sister, testified that Mother lived in four places, and Mother did not object to this testimony. John testified, without objection, that Mother lived in a hotel for a week. Father testified, without objection, that Mother lived with him. Mother failed to object to the admission of this evidence and has waived this issue. See Joe v. Lebow, 670 N.E.2d 9, 21, 21 n.11 (Ind. Ct. App. 1996) (holding that mother waived issue by failing to object).

Waiver notwithstanding, we note that the prior order was an agreed stipulation, and thus, there was no custody proceeding that would activate this section of the statute. See Dwyer v. Wynkoop, 684 N.E.2d 245, 249 (Ind. Ct. App. 1997) (addressing Ind. Code § 31-1-11.5-22(f)[3] (subsequently repealed by Pub. L. No. 1-1997, § 157) and holding that "when parents stipulate as to who will have custody of the child and the trial court grants a summary dissolution on the basis of such agreement without hearing evidence on the issue of custody, there is no 'custody proceeding' that would activate this section of the

[3] Ind. Code § 31-1-11.5-22(f) provided that "[t]he court shall not hear evidence on a matter occurring before the last custody proceeding . . . ."

statute" and that "this section does not apply to situations where custody was originally determined solely by stipulation of the parties"), trans. denied.

Regarding Mother's employment history, Father testified that Mother had worked at Bendix and Eco-Lab and had worked at five or six jobs but did not specify each job. While Mother was residing with John, Mother worked at a mailbox service, a fast food restaurant, and for John's business. Father concedes that the record "is not entirely clear as to how many jobs she held." Appellee's Brief at 11. We cannot say that the record supports the finding that Mother had nine jobs and conclude that the trial court clearly erred by making this finding.

B. Finding 5 - Condition of Mother's Apartment

Mother argues that the trial court erred by finding:

> 5. That [Mother] along with the children, has resided in an apartment described as "deplorable" with a "path through the apartment" surrounded by stacks of trash, months worth of trash in garbage bags, including soiled diapers, and thousands of gnats present in the apartment, while living with the minor children in said apartment.
>
> That [Mother] has been described as having no housekeeping skills with very dirty sheets, and dirty diapers in the wastebasket.

Appellant's Appendix at 49. Mother argues that "[t]he particular finding came directly from the testimony of John Kochensparger" and that "[t]he condition of her apartment was not continuing in nature, but was the description of her apartment on one particular day, over one year prior the modification of custody." Appellant's Brief at 10.

At the hearing, the following exchange occurred between Father's attorney and John:

> Q And can you describe for me that move if you would please?
>
> A [T]he conditions in her apartment were so deplorable that if she had not been moving out I would have walked out and called child protective services, called the police, engaged someone. There was basically a path to walk through the apartment with stacks of clothing, trash, things stacked around the room. There was a water cup with disposed cigarette butts. I have no idea how old it was. There was, I would estimate, a months' worth of trash setting around, garbage bags. And how I came to know this is when we were trying to figure out what was being packed for the trip in garbage bags and what was trash I was opening bags trying to uh, expedite the move, and when I would open them I would smell soiled diapers and literally – and I'm not exaggerating – thousands and thousands and thousands of gnats uh, flying over – all over that apartment. It was so bad that I approached [Mother], who was going out on some errands while we were doing all this work for her uh, I asked her to get some fly spray so that we could try and spray the apartment and make it a little bit easier. I would say there were a week to two weeks worth of dirty dishes and cookware stacked in the sink uh, boxes of cereal, food sitting out on the table that had been sitting there for who knows how long. So it was uh, pretty messed up, counselor.
>
> * * * * *
>
> Q Okay. How were her housekeeping skills while at your home?
>
> A Pretty much doesn't have any. . . . She didn't like washing sheets. In fact after she moved and we finally went into her room, her shirt – sheets – her own sheets were even yellow from her own uh, body oils and things of that nature. Now the children's sheets were washed because when she wasn't there my wife and I would take care of the children uh, and try and provide them as healthy a environment as we could. She put dirty diapers in a wastebasket even though we provided a Dart Diaper Dispenser for her, which she

> wouldn't empty the diaper dispenser until we began to complaint [sic] about uh, about odor. So it wasn't a very pleasant situation.

Transcript at 35-36, 38-39. Mother directs our attention to the testimony of Patti L. Hunt-Mitchell of the Huntington County Youth Services Bureau that Mother's apartment was clean. Mother also points out that while John Kochensparger complained that Mother's bed sheets were very dirty and that she left dirty diapers in the wastebasket, he also testified that Mother's apartment was "actually picked up pretty decent." Transcript at 19. Mother asks that we reweigh the evidence and judge the credibility of the witnesses, which we cannot do. Fields, 749 N.E.2d at 108.

C. Finding 6 – Mother's Parenting

Mother argues that the record does not support the following finding:

> 6. That testimony of John Kochensparger indicated that while [Mother] lived with him and his wife, [Mother] would only sometimes get up to care for the children at night, leaving the parenting duties to John Kochensparger and his wife. That in addition, John Kochensparger testified that [Mother] often placed the children in front of the television for child care, and frequently imposed on neighbors for child care.

Appellant's Appendix at 49.

The record reveals the following exchange between Father's attorney and John:

> Q And how did – who took care of the children?
> A Uh, [W.K.] would wake occasionally with bad dreams and uh, if uh, we were still up my wife and I would respond to that. Uh, there were times when [J.K.], the infant, would cry uh, (indecipherable) during the night and my wife would get up and take with – take care of her. Well once my wife Susan was up then [Mother] would usually get up and go ahead and take over but there towards the end when relationships began to deteriorate [Mother] just did nothing.

> And then when we would talk to her the next day complaining about, you know, the baby crying every hour and her doing nothing about it, she would accuse us of lying even though we had both been awakened out of a dead sleep uh, by the baby crying, and – and in fact one time we got up to go take care of the baby and she settled back down.
>
> * * * * *
>
> Q What – what other arrangements did she make for childcare?
>
> * * * * *
>
> A Yea, there was – she uh, well, she had the childcare service. Uh, she would sometimes leave them with us but then she'd criticize (indecipherable) when we'd put them – try to entertain them with television so we could work. But then when she was working she would try and do the same thing but yet she was critical to us for dong [sic] the same thing. She imposed on uh, every uh, every neighbor at our end of the culdesac [sic] that all – also had children and uh, was taking advantage of them to the point where they were calling us outside of their conversations with [Mother] basically saying, you know, why is she calling us, why is she bothering uh, bothering us with these details.

Transcript at 40, 42-43. Based on the record, we conclude that the record supports the trial court's finding.

Mother also argues that even if the facts were supported by the record, she "no longer lives in Virginia so that the facts are not substantial and continuing in nature as to justify a modification of child custody."[4] Appellant's Brief at 13. We do not find the fact that Mother no longer lives in Virginia negates this finding.

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[4] Mother relies on Simons v. Simons, 566 N.E.2d 551, 554 (Ind. Ct. App. 1991)) to argue that "[w]here a modification of child custody is sought, the burden is on the non-custodial parent to prove that

D. Finding 7 – Monitoring Phone Calls

Mother argues that the trial court erred by finding:

> 7. That [Mother] monitored telephone conversations between [Father] and the minor children, while staying close to the phone, and on occasion interrupted those telephone conversations.

Appellant's Appendix at 49. The record reveals the following exchange between Father's attorney and John:

> Q And what did you observe during those calls or conversations (inaudible)?
>
> A [Mother] would stay close to the telephone and uh, she would interrupt the children when she would hear someone else get on the telephone. She would – she would make an interruption uh, she did uh, when they – when [Mother] wasn't there uh, I would let [Father] just kind of talk to the kids endlessly until – until the children were finished or until he was finished. But uh, she did monitor their conversations but in fairness to [Mother] they – they could be heard without actually getting down uh, getting down close to the phone.

Transcript at 47-48. Based on the record, we conclude that the record supports the trial court's finding. To the extent that Mother suggests that this was an occasional occurrence, Mother asks that we reweigh the evidence and judge the credibility of the witnesses, which we cannot do. Fields, 749 N.E.2d at 108.

E. Finding 8 – Disparaging Comments

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the existing custody order should be modified due to a substantial *and continuing* change in circumstances." Appellant's Brief at 6. Simons interpreted Ind. Code § 31-1-11.5-22(d) which provided in part, "The court in determining said child custody, shall make a modification thereof only upon a showing of changed circumstances so substantial and continuing as to make the existing custody order unreasonable." However, Ind. Code § 31-1-11.5-22(d) was repealed by Pub. L. No. 1-1997, § 157 (eff. July 1, 1997), and the current statute applicable to paternity proceedings does not require that a change be

Mother argues that the record does not support the following finding:

> 8. That [Mother] made disparaging comments about [Father] in the presence of the children.

Appellant's Appendix at 49. The following exchange occurred between Father's attorney and John:

> Q Did – did you ever hear her make discouraging comments to the children (indecipherable) in front of – in front of the children about [Father]?
>
> A Yes.

Transcript at 48. While Mother appears to recognize this testimony, she argues that "[t]here was no basis in the record for this finding of fact" because "[t]here was no evidence as to what the comments were or how they were disparaging toward [Father]." Appellant's Brief at 14. We conclude that the testimony supports the finding.

F. Finding 9 - Visitation

Mother appears to argue that the record does not support the following finding:

> 9. That [Father] has regularly exercised visitation, however, [Mother] has created problems with that visitation, has denied [Father]'s wife the right to pick up the children for visitation, has made disparaging comments about [Father]'s wife in the presence of the children, and has denied gifts intended for the children because they were from [Father]'s wife and family.

Appellant's Appendix at 49. Mother concedes that Father had problems with visitation regarding "conflicts on when he could pick up the children and regarding the parenting

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continuing. See Ind. Code § 31-14-13-6.

time guidelines on holidays." Appellant's Brief at 14. Mother appears to argue that the record does not support this finding because Father "did not indicate how often or how recent those problems occurred" or that "any alleged problems did not prevent him from parenting time with his children." Id. We conclude that the record supports this finding even without this additional information.

Mother also concedes that Father testified that Mother and her sister said "keep that stupid bitch off my property" and that Mother called his wife names in front of the children. Transcript at 17. Mother appears to argue that the record does not support the finding because Father "did not indicate what those names were." Appellant's Brief at 14. We conclude that the record supports this finding without this additional information.

Mother concedes that she "did call [Father] after his wife's parents sent the children Christmas gifts while they were living in Virginia" and "asked that his in-laws stop sending Christmas gifts because they were not the children's grandparents." Appellant's Brief at 14. Mother appears to argue that the record does not support the finding because the Father did not know whether the children received the gifts or not. The following exchange occurred between Father's attorney and Father:

> Q And what – what was the result of the gifts that they sent down there? What response did you get from [Mother] on that?
> A We got a phone call stating that they were not their grandparents and they had no business sending them anything, and she asked that it stopped. [sic]

Transcript at 20. Again, we conclude that the record supports this finding without the additional information.

G. Finding 10 – Father Remarried

The trial court found that "[Father] was recently married to Casey Kochensparger." Appellant's Appendix at 49. Mother argues that the fact that Kochensparger married cannot serve as a basis to modify child custody. "Changes in lifestyle including remarriage, full-time employment and achieving stability since the last custody decree do not warrant a change in custody." Spoor v. Spoor, 641 N.E.2d 1282, 1286 (Ind. Ct. App. 1994). Based on the trial court's order, we cannot say that the trial court relied solely on the fact that Father remarried to support the modification of custody.

H. Finding 11 – Parenting Time Guidelines

The trial court found:

> 11. Testimony established that [Mother] did not comply with the Indiana Supreme Court Guidelines, in that [Mother] did not offer [Father] the right of first refusal to care for the minor children, while [Mother] was at work, rather, [Mother] unilaterally took the minor children to a child care provider, and at times, denied the [Father] the opportunity to even pick up the children from the child care provider.

Appellant's Appendix at 49. Our review of the record reveals the following exchange between Father's attorney and Mother:

> Q If we could work it out that it was under that would you have any objection to that and would you have any objection to [Father] and Casey having the children for that period of time?
> A Not un – not if they were consistent, not if they had them at noon every day.
> Q Have you ever offered that?

A I have told [Father] I don't mind if he picks up the kids. I haven't said hey, if you want you can pick them up at – every day at noon, no. But he has not shown an interest.

Q You – you realize that the guidelines give him the first opportunity for childcare?

A He – I – he asked me who the babysitter was. I told him who it was. He did not ask me if he could watch them instead. He has never shown that interest. He has never expressed it to me. Usually he tells me well, I'll pick them up at three so I can sleep a little bit longer.

Transcript at 134-135. Based on the record, we conclude that support exists for the finding that Mother did not offer Father the right of first refusal to care for the Children.[5]

Mother argues that the record does not support the finding that she denied the Father the opportunity to pick up the children from day care. Mother directs us to the testimony of April Jines, a childcare provider, in which she indicated that Father picks up the children periodically and that Father is listed on their paperwork to pick up the children. Our review of the record does not reveal support for the finding that Mother "at

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[5] The Parenting Time Guidelines discuss the opportunity for additional parenting time by allowing the non-custodial parent the right of first refusal to provide child care:

> Opportunity for Additional Parenting Time. When it becomes necessary that a child be cared for by a person other than a parent or a family member, the parent needing the child care shall first offer the other parent the opportunity for additional parenting time. The other parent is under no obligation to provide the child care. If the other parent elects to provide this care, it shall be done at no cost.

Ind. Parenting Time Guideline § I(C)(3). The Commentary to this subsection explains:

> The rule providing for opportunities for additional parenting time promotes the concept that a child receives greater benefit from being with a parent rather than a child care provider. It is also intended to be practical. When a parent's work schedule or other regular recurring activities require hiring a child care provider, the other parent should be given the opportunity to provide the care. Distance, transportation or time may make the

times, denied the [Father] the opportunity to even pick up the children from the child care provider."[6] Appellant's Appendix at 49. Thus, we conclude that the trial court clearly erred by making this finding.

I. Finding 12 - Visitation

Mother argues that the record does not support the following finding:

> 12. [Mother] acknowledged that she attempted to control [Father]'s visitation with the minor children and restricted visitation by not agreeing to changes in alternate weekend visitation, although she could give no reasons therefor.

Appellant's Appendix at 49. The following exchange occurred between Father's attorney and Mother:

> Q But you object to alternating weekends just because you want that control?
> A No.
> Q You object because you have plans for every other weekend from now on?
> A We usually do have plans every other weekend. I let [Father] know if we don't have plans. If he wants to switch and we don't have plans I'm more than happy to switch. But if I already have plans –
> Q No, I'm talking – I'm talking a permanent change. A permanent change right now we change weekends, we change our alternate weekends. We now until - or -
> A But they – I know they wouldn't stay that way. At some point somebody would need to change them again and it –
> Q No, there's no question. They're – they're – these – these children are small.
> A Yes they are.
> Q At some point in the future everything is going to change?

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rule impractical. Parents should agree on the amount of child care time and the circumstances that require the offer be made.

[6] Father does not direct our attention to the record to support this finding.

A Right.
Q At some point you're going to have to make arrangements for each other. He gets called up. You get a strange work schedule. He has a strange work schedule. You – you need to work together. Things are going to change. This – they're – they're just – they just need to change. But you – you're saying that – that you still object to that?
A To changing weekends just to change weekends, why would there be any point if both of us are happy with how they are?
Q Well, obviously he's not happy. He's asked you to do that and you've – you've refused to do that.
A He hasn't asked me to switch weekends since October.
Q He's never come to you and asked that they permanently be changed?
A No. Not since October.
Q Nor has Casey?
A No. One time in October and I told him no because we had previous plans. They said they wanted to do it just because Casey wanted to have the kids on the weekends she worked. I said no because we had plans and they dropped it. They have not asked again.
Q Is this a control issue?
A No, it's not.

Transcript at 135-137. Again, our review of the record does not reveal support for the trial court's finding that Mother acknowledged that she attempted to control Father's visitation and restricted visitation by not agreeing to changes in alternate weekend visitation for no reason.[7] Thus, we conclude that the trial court clearly erred by making this finding.

J. Finding 13 – Father and Casey's Involvement

Mother argues the record does not support the following finding:

[7] Father does not direct our attention to the record to support this finding. Rather, Father states that "[s]olely on the basis that paragraph 12 of the trial court's Findings of Fact and Conclusions of Law is cumulative with respect to paragraph 7, paragraph 8, paragraph 9, and paragraph 11, [Father] will

> 13. [Father] and the minor children's stepmother, Casey Kochensparger, are substantially involved in the minor children's life, and testimony from John Kochensparger was that [Father] and Casey Kochensparger were spectacular around the children and could do a much better job parenting the children than [Mother].

Appellant's Appendix at 49-50. The following exchange occurred between Father's attorney and John:

> Q And have you observed [Father] uh, have you – have you – do you know [Father] – Casey Kochensparger?
> A Yes, I've become – I first met her last September and uh, and I believe this is the third time that I have actually met with her and begin to get acquainted with her.
> Q And have you observed [Father] around the children.
> A I have.
> Q And what are your observations?
> A Uh, I've – they're both spectacular with the children and uh, I – I think they could do a lot better job than what [Mother]'s doing.

Transcript at 48-49. Mother recognizes John's testimony but argues that "John also indicated he has had limited contact with [Father] and his wife around the children." Appellant's Brief at 17. Mother asks that we reweigh the evidence and judge the credibility of the witnesses, which we cannot do. Fields, 749 N.E.2d at 108.

In summary, we conclude that the trial court made three findings that were clearly erroneous. We must consider whether the remaining findings support the judgment. Yanoff, 688 N.E.2d at 1262.

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concede that paragraph 12 standing alone cannot support a modification of custody." Appellee's Brief at 13.

Mother argues that many of the findings alone cannot support the modification of custody because they are only isolated incidents of misconduct. "[T]he noncustodial parent must show something more than isolated acts of misconduct by the custodial parent to warrant a modification of child custody; the noncustodial parent must show that changed circumstances regarding the custodial parent's stability and the child's well-being are substantial." Wallin v. Wallin, 668 N.E.2d 259, 261 (Ind. Ct. App. 1996). We cannot say that any one factor warrants a change of custody in the present case. However, the consideration of all the factors is sufficient to establish that modification is in the best interests of the children and a substantial change has taken place in the interaction and interrelationship of the children with the children's parent or parents, and other persons who may significantly affect the children's best interests, the children's adjustment to their home and community, and the mental and physical health of all of the individuals involved. See Barnett v. Barnett, 447 N.E.2d 1172, 1175 (Ind. Ct. App. 1983) (holding that instability of mother's life, coupled with "parade of step-fathers," warranted modification of custody).

For the foregoing reasons, we affirm the trial court's grant of Father's petition to modify the custody of J.K. and W.K.

Affirmed.

SULLIVAN, J. and CRONE, J. concur